



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

Angels of the Great One Child Care

ML-09-0299

Pursuant to petition filed October 5, 2009, under sec. 227.42, Wis. Stats., to review a decision by the Department of Children and Families (Department), in regard to the denial of a family day care license, a hearing was held on December 10, 2009 at Milwaukee, Wisconsin.

The issue for determination is whether the Department was correct in its denial of the petitioner's application for a regular family day care license.

There appeared at that time and place, the following persons:

PARTIES IN INTEREST:

Petitioner:

Keona Kennedy
Angels of the Great One Child Care
2403 North 35th Street
Milwaukee, WI 53210

Respondent:

Department of Children and Families

By: Debra Bursinger
Office of Legal Counsel
201 East Washington Avenue, 2nd Floor
Madison, WI 53703

Administrative Law Judge:

Joseph A. Nowick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Keona Kennedy operated Angels of the Great One Child Care in Milwaukee, Wisconsin.
2. The petitioner applied for a regular license for a family child care center on October 3, 2008. A probationary license was granted on March 3, 2009. (Exhibits R-5 and R-6)
3. The petitioner applied for a regular license for a family child care center on August 30, 2009. The Department denied the application on September 29, 2009, and sent a notice to the petitioner to that effect. (Exhibits R-7 and R-8)

4. On May 26, 2009, the Department (then the Dept. of Health and Family Services) did a licensing visit. Colleen Hanser, the licensing specialist completed a "Noncompliance Statement and Correction Plan". (See Exhibit #R-1.) This document contained 20 violations of the applicable administrative rule (Chapter DCF 250).
5. On August 16, 2000, Ms Hanser conducted another licensing visit at the petitioner's day care center. The visit resulted in a second Noncompliance Statement and Correction Plan listing 14 violations. See (See Exhibit #R-2.) The major areas of concern included the failure to maintain adequate records of some children and some staff, the failure to meet minimum space requirements, and the lack of supervision provided to certain children. These would be violations of Chapter 46, Wis. Admin. Code.
6. On September 9, 2009, the licensing specialist John Roso conducted a third licensing visit at the petitioner's day care center. The visit resulted in a third Noncompliance Statement and Correction Plan listing 30 violations. See (See Exhibit #R-3.) .
7. The Department denied the petitioner a regular license based on its opinion that the petitioner had failed to protect children at the child care center.

DISCUSSION

In general, licensing is done to protect the public in regard to a service or product. In this case, the licensing activity is the operation of a family day care center for children. The goal of this activity is the care of infants and toddlers. These children are very young and unable to care for themselves. Thus, day care centers are licensed because the children who are placed there are not competent to protect themselves and society expects them to be well served and protected. It is the day care center director and staff who, as responsible and mature adults, must provide care that will protect and nurture these very young children.

The basic law that applies to this case is 48.715(3)(c), Wis. Stats., which, in the parts relevant here, provides as follows:

(3) If the department provides written notice of the grounds for a penalty, an explanation of the types of penalties that may be imposed under this subsection and an explanation of the process for appealing a penalty imposed under this subsection, the department may impose any of the following penalties against a licensee or any other person who violates a provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.67 or who fails to comply with an order issued under sub. (2) by the time specified in the order:

....

(c) Refusal to continue a license or a probationary license.

The Department promulgated rules under s. 48.67. Those rules relevant to this matter are found in Chapter DCF 250, Wisconsin Administrative Code. The Department has the power to deny a regular day care license under certain circumstances. The WI Admin Code §DCF 250.11(2)(c), states the following:

(c) Persons licensed to operate a family child care center shall be responsible, mature individuals who are fit and qualified. In determining whether an applicant is fit and qualified, the department shall consider any history of civil or criminal violations or other offenses substantially related to the care of children by the applicant, owner, manager, representative, employee, center resident or other individual directly or indirectly participating in the operation of the family child care center. A determination that a person is unfit and unqualified includes substantiated findings of child abuse or neglect

under ch. 48, Stats., or substantiated abuse under ch. 50, Stats., or under similar statutes in another state or territory whether or not the abuse or neglect results in a criminal charge or conviction.

In a hearing concerning the propriety of a denial of a family day care license, the department has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the department's case and establish facts sufficient to overcome the department's evidence that it took the correct action in determining that the denial of the license was required.

The Department denied a regular family childcare license because it asserts that the petitioner violated a number of regulations that must be met as a condition of having that license. With over 60 alleged violations, I will not address each one. I am willing to accept the petitioner's testimony that refuted some of the alleged violations. For example, the young girl in the bathroom was her daughter and that she had made some joking comments to her that were misconstrued by the licensing specialists. Further, the petitioner provided some reasonable explanations for a few of the violations. However, in general, the petitioner did not dispute the facts as presented by the Department and admitted she had been out of compliance with many, but not all of the standards over a period of about six months as alleged. However, she explained that all of those problems had either been corrected immediately or at least had been corrected by now. She testified that the violations from the last licensing visit had not all been corrected since she had been told her license was being revoked. In short, while the petitioner attempted to comply with correcting the cited violations, some of the same and some new violations were discovered at each subsequent visit.

Based upon the foregoing, I must conclude the Department has established sufficient facts to confirm that the petitioner had failed to meet the standards mandated by the administrative code. While she provided explanations, such explanations do not change the fact the actions directly violated several specific provisions of the code.

The only issue to be discussed here is whether the rule violations meet the criteria for a denial of a regular family day care license. After reviewing the violations, I must find that they do. This is based on the petitioner's repeated failure to remedy all of the violations and *prospectively* keep the center relatively free from violations. The fact that the petitioner was always out of compliance makes it seem that the petitioner did not really attempt to learn the necessary rules until it was pointed out to her that she had violated them. This conclusion was strengthened by comments the petitioner made at the hearing. She stated that she now understands the seriousness of being a provider and that she learned from the time she had the probationary license. I have no problem understanding that a new provider with a probationary license may have a "learning curve" when first starting. However, this does not allow for a significant number of violations in such a short period of time. The children in her care are entitled to the protection of all of the rules from the first day the child care center opens its doors.

In conclusion, the finding of violations on three consecutive monitoring visits shows that the center has continually failed to meet the minimum standards. This is not to say that the petitioner is not a caring person who does not want the best for the children. What it does mean is that the petitioner was unable to implement the applicable mandatory regulations in the code. Thus, I conclude that the Department's decision was warranted. The license violations found in this child care center were too numerous to believe that other violations would not occur in the future. This is a clear threat to the welfare of the children.

CONCLUSIONS OF LAW

1. Petitioner has failed to meet the regulations applicable to the operation of a family child day care center.
2. The Department's denial of a regular family day care license is sustained.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Wisconsin Statutes § 227.49. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, 2nd Floor, Madison, Wisconsin, 53703.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to circuit court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2010.

Joseph A. Nowick
Administrative Law Judge
Division of Hearings and Appeals